

The enterprise zone building materials exemption allows retailers located in the municipality or unincorporated area of a county that established an enterprise zone to make tax-free sales of building materials that will be incorporated into real estate located in the enterprise zone. See 86 Ill. Adm. Code 130.1951. (This is a GIL).

March 20, 2000

Dear Xxxxx:

This letter is in response to your letter dated February 1, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I am writing to you on behalf of one of our clients who is requesting a General Information Letter (GIL), pursuant to 2 Ill. Admin. Code Sec. 1200.120. The GIL should address whether a Zone Supplier utilized by our client satisfies the requirements for the sales tax exemption for sales of building materials incorporated into real estate located in an Enterprise Zone. GILs respond to inquiries made by taxpayers or their representatives. We understand that GILs discuss tax principles or applications and are not binding on the Illinois Department of Revenue ("the Department").

FACTS

1. The Business Organization

ABC, a company located in CITY, Illinois, plans to improve its real property located in a CITY Enterprise Zone. ABC plans to utilize a Zone Supplier located in CITY to purchase the necessary building materials and sell those materials to the Contractor. The Contractor will then perform the capital improvements. The Zone Supplier is a wholly-owned subsidiary of ABC. There are various business reasons for utilizing a Zone Supplier. First, a Zone Supplier provides for the centralization of costs and ease of administration. By having a separate entity handle the purchase of building materials, ABC can monitor the costs and business negotiations of the project in a faster, more efficient manner. Second, the Zone Supplier will promote economic growth within the Enterprise Zone and will fill a void in the market for retailers of heavy building materials within the municipality.

2. Steps of the Capital Improvement

ABC will take the following steps in implementing its capital improvement plan:

1. A separate legal entity will be created to serve as an Enterprise Zone retailer (the "Zone Supplier") of building materials for incorporation into real estate located in the Enterprise Zone.
2. The Zone Supplier will have a separate Department registration and FEIN number.
3. The Zone Supplier will lease office space from ABC within the municipality that created the Enterprise Zone. The office space will be leased from ABC at fair market value.
4. The Zone Supplier will register for collection of the Illinois Retailer's Occupation Tax and other applicable taxes.
5. The Zone Supplier will have a separate bank account into which its receipts will be deposited. A sub-account shared with ABC will be used to make payments to the companies ("Materials Suppliers") from which the Zone Supplier purchases building materials. The Zone Supplier will transfer monies from its separate bank account to the sub-account to replenish the funds used to pay the Materials Suppliers.
6. Contractors and subcontractors ("the Contractor") will be requested to utilize the Zone Supplier for the purchase of building materials for incorporation into real estate located in the Enterprise Zone.
7. Purchases by the Zone Supplier will be effectuated in the following manner:
 - (a) The Contractor will prepare a purchase order ("Contractor's Purchase Order") for all purchases of building materials from the Zone Supplier. The Zone Supplier may purchase the materials from any Materials Supplier that has those materials available. The Contractor may submit to the Zone Supplier the names and addresses of suggested Materials Suppliers from whom materials may be obtained ¹. The Zone Supplier will initial and date stamp the Contractor's Purchase Order when received and accepted. All purchase orders will be accepted at the Zone Supplier's CITY location. The Zone Supplier will keep all of the Contractor's Purchase Orders received in its files.
 - (b) A Purchaser's Statement executed and signed by the Contractor will be placed on file with the Zone Supplier at the beginning of the project. The Purchaser's Statement will contain a certification by the Contractor that the building materials being purchased are for incorporation into real estate located in an Enterprise Zone, a description of the building materials being purchased, the location of the real estate into which the

building materials will be incorporated, the name of the Enterprise Zone in which that real estate is located, and the Contractor's signature and date of signing.

- (c) Upon receipt of the Contractor's Purchase Order and the Purchaser's Statement, the Zone Supplier will prepare and provide to the Materials Supplier a Purchase Order ("Zone Supplier's Purchase Order") which incorporates the materials listed on the Contractor's Purchase Order. The Contractor's Purchase Order will be attached to the Zone Supplier's Purchase Order and sent to the Materials Supplier. The Zone Supplier's Purchase Order will ask that the materials be drop-shipped to the Contractor at the construction site. The Zone Supplier's Purchase Order will include a Certificate of Resale.
 - (d) Upon receipt of the materials which are drop-shipped to the Contractor pursuant to the Zone Supplier's Purchase Order, the Contractor will inspect the materials and send a copy of the Materials Supplier's shipping documents to the Zone Supplier indicating the materials meet standards. In the event the Materials Supplier is unable to deliver appropriate materials, the Zone Supplier will find another Materials Supplier from which to purchase the goods.
 - (e) The Zone Supplier will record the purchase of the materials from the Materials Supplier and the sale of the materials to the Contractor in its books and records.
 - (f) Upon receipt of the invoice from the Materials Supplier, the Zone Supplier will invoice the Contractor for the amount due.
 - (g) The Zone Supplier will pay the Materials Supplier upon receipt and deposit of payment from the Contractor.
8. All functions related to the processing of its documents – including acceptance of the Contractor's P.O. - will be performed by the Zone Supplier at its location in CITY, Illinois.

ISSUE

Do the steps described above for the establishment of a Zone Supplier by ABC satisfy the requirements of 86 Ill. Adm. Code 130.1951, allowing the Zone Supplier to claim the Enterprise Zone Building Materials Exemption?

LAW

In Illinois, retailers may claim an exemption with respect to sales of building materials incorporated into real estate located in an Enterprise Zone. 35 ILCS 120/5k and 86 Ill. Adm. Code 130.1951(a)(1). In order to qualify for the exemption, a retailer must comply with the following requirements: (1) the retailer must have an identifiable physical presence in the municipality or the county that has established the enterprise zone; (2) the retailer must register with the Department as a retailer at a location in the municipality or in the unincorporated area of the county that has established the enterprise zone; and (3) the retailer must be able to document the acceptance of purchase orders from its customer, the contractor, at the location in the municipality or the county that has established the enterprise zone. Id. at (a)(2)(A) – (C). It is critical that a clear "paper trail" exist showing that a contractor purchased the materials from a qualified retailer and that, in a separate transaction, the retailer purchased the materials from a supplier. ST 95-0270 GIL, ST 95-0433 GIL & ST 97-27.

ANALYSIS

The Zone Supplier in this case satisfies all the conditions of 86 Ill. Adm. Code 130.1951, and should qualify for an exemption from collecting sales tax on building materials sold for incorporation into real estate located in an Enterprise Zone. The conditions are satisfied as follows:

- A. The retailer (Zone Supplier) must have an identifiable physical presence in the municipality or the unincorporated area of the county that has established the enterprise zone. In this case the Zone Supplier will have rented office space within the City of CITY, Illinois.
- B. The retailer must be registered with the Department as a retailer at a location in the municipality or in the unincorporated area of the county that has established the enterprise zone. In this case the Zone Supplier will register with the Department for a registration number and FEIN. The Zone Supplier will list as its address the rented office space within CITY, Illinois.
- C. The retailer must be able to document the acceptance of purchase orders at a location in the municipality or the unincorporated area of the county that has established the enterprise zone. In this case the Zone Supplier will accept, initial and date stamp all of the Contractor's Purchase Orders at its rented office space in CITY, Illinois.
- D. There must be a sale from a supplier to a retailer which is independent of the sale from the retailer to the contractor, the exemption applicable to the sale transaction must be properly documented, and the sale transaction must be reflected in the books and records of the qualified retailer. In this case the sale of building materials from the Materials Supplier to the Zone Supplier will occur and be documented as follows:

1. The Zone Supplier, located in CITY, Illinois, will submit its Zone Supplier's Purchase Order to the Materials Supplier.
2. The Zone Supplier's Purchase Order will include a certificate of resale.
3. The Materials Supplier will issue an invoice to the Zone Supplier at its CITY, Illinois office.
4. The Zone Supplier will pay the Materials Supplier's Invoice.

The resale exemption applicable to this sale will be properly documented by the Zone Supplier's issuance of a Certificate of Resale to the Materials Supplier. The Zone Supplier will record this purchase in its books and records.

E. There must be a sale from the retailer to the contractor which is independent of the sale from the supplier to the retailer, the exemption applicable to the transaction must be properly documented, and the transaction must be reflected in the books and records of the qualified retailer. In this case the sale of building materials from the Zone Supplier to the Contractor will occur and be documented as follows:

1. The contractor will submit its Contractor's Purchase Order to the Zone Supplier.
2. The contractor will execute and provide a Purchaser's Statement to the Zone Supplier at the beginning of the project. The Purchaser's Statement will include a certification by the Contractor that the building materials being purchased are for incorporation into real estate located in an Enterprise Zone, a description of the building materials being purchased, the location of the real estate into which the building materials will be incorporated, the name of the Enterprise Zone in which that real estate is located, and the Contractor's signature and date of signing.
3. The Zone Supplier will issue an invoice to the Contractor.
4. The contractor will pay the Zone Supplier's Invoice.

The enterprise zone building materials exemption applicable to this transaction will be properly documented by the Contractor's issuance of a Purchaser's Statement to the Zone Supplier. The Zone Supplier will record this sale in its books and records.

CONTRARY AUTHORITY AND DISCUSSION

In General Information Letter St-94-0092-GIL, the Department ruled that the documents submitted properly documented that the Zone Supplier's sale to the contractor was

exempt from tax under the enterprise zone buildings material exemption. However, the Department indicated that certain aspects of the documents submitted "may tend to raise questions about the transaction, which could trigger a more extensive audit [of the exemption]." In this regard, the Department cited:

1. The contractor listed the material supplier's name and address in the purchase order to the zone supplier.
2. The zone supplier's purchase order to the material supplier instructed the material supplier to send all invoices, correspondence, and shop drawings to the zone supplier in care of the contractor at the contractor's office.

The facts in the present ruling request are clearly distinguishable from those in ST-94-0092-GIL. First, in the present case, while the contractor's purchase order lists the name and address of a materials supplier, the name listed is merely a requested vendor which is subject to the zone supplier's approval. In other words, the Zone Supplier is free to order from whomever it chooses. Moreover, the contractor's purchase order expressly states that the items ordered will be purchased by the zone supplier from another company pursuant to a separate transaction and then resold to the contractor. Second, in the present case, the zone supplier's purchase order instructs the materials supplier to send all invoices and correspondence to the zone supplier's office, not to the contractor's office.

In Private Letter Ruling ST-89-0255 PLR the Department denied the enterprise zone buildings material exemption to the extent that the materials supplier billed the contractor of the nursing home directly. The facts of the present case are clearly distinguishable from those in ST-89-0255 PLR, since in the present case the materials suppliers will have separate transactions with and will only invoice the zone supplier, not the contractor.

CONCLUSION

Based on the foregoing facts, please confirm that these transactions qualify for the exemption from sales tax for the sale of building materials incorporated into real estate located in an Enterprise Zone under 86 Ill. Adm. Code 130.1951.

We request that the Department send to us on behalf of our client a GIL addressing the issue presented. Your cooperation is appreciated.

The enterprise zone building materials exemption allows retailers located in the municipality or unincorporated area of a county that established an enterprise zone to make tax-free sales of building materials that will be incorporated into real estate located in the enterprise zone. See 86 Ill. Adm. Code 130.1951, enclosed.

In order for businesses to qualify for the exemption as retailers, they must comply with the following requirements:

1. Retailers must have an identifiable physical presence in the municipality or the county that has established the enterprise zone;
2. Retailers must register with the Department as a retailer at a location in the municipality or in the unincorporated area of the county that has established the enterprise zone;
3. Retailers must be able to document the acceptance of purchase orders at the location in the municipality or the county that has established the enterprise zone.

In order for the enterprise zone building materials exemption to be claimed, it must be shown that qualifying building materials were purchased from a retailer located in the jurisdiction that created the enterprise zone into which the building materials will be incorporated. It is critical that a clear paperwork trail exists showing that buyers purchased the materials from qualified retailers. In general, the following two transactions must exist:

1. Sales from suppliers to retailers who are located in the jurisdiction that created the enterprise zone (exempt as sales for resale); and
2. Sales from retailers who are located in the jurisdiction that created the enterprise zone to buyers (exempt by reason of the enterprise zone building materials exemption).

Each of these transactions must exist independent of the other and the exemption applicable to each transaction must be documented. We urge taxpayers not to be cavalier in structuring these transactions. Generally, the following documentation establishes the two transactions and the available exemptions:

1. Sales from suppliers to retailers:
 - a. Purchase orders from retailers to the suppliers;
 - b. Certificates of Resale from retailers to suppliers (see the enclosed copy of 86 Ill. Adm. Code 130.1405, which describes the requirements for Certificates of Resale);
 - c. Invoices from suppliers to retailers; and
 - d. Payments to suppliers from retailers.
2. Sales from retailers to purchasers:

- a. Purchase orders from purchasers to the retailers;
- b. Enterprise zone building materials certifications from purchasers to retailers containing all of the information set forth at 86 Ill. Adm. Code 130.1951(a)(3);
- c. Invoices from retailers to purchasers; and
- d. Payments to retailers from purchasers.

There is no requirement that the materials be physically received at the retailer's location. If the sales of the building materials are made in compliance with the above requirements, such sales will qualify for the enterprise zone exemption. Generally, persons that structure their transactions in the manner you describe in your letter can properly claim the exemption.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:mks
Enc.

1 The language on the contractor's purchase order would be as follows:

[The Contractor] understands that the items ordered herein will be purchased by [Zone Supplier] from another company pursuant to a separate transaction and resold to it. [The Contractor] requests, subject to [Zone Supplier's] approval, that the items be purchased by [Zone Supplier] for resale from:

Material Supplier
Address